

1 McGREGOR W. SCOTT
United States Attorney
2 SYLVIA QUAST
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2740

5 Attorneys for the United States of America

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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 RICHMOND AMERICAN HOMES OF
MARYLAND, INC., A MARYLAND
15 CORPORATION, AS SUCCESSOR BY
MERGER TO RICHMOND AMERICAN
16 HOMES OF CALIFORNIA, INC.,

17 Defendant.

Civil Action No.
COMPLAINT

18
19 THE UNITED STATES OF AMERICA,
20 through its undersigned attorneys, alleges as follows:

21 STATEMENT OF THE CASE

22 This is a civil action brought by the United States of America on behalf of the United States Army
23 Corps of Engineers to recover a civil penalty and for injunctive relief.

24 JURISDICTION AND VENUE

25 1. This is a civil action to enjoin the Defendant's recurring violations of the Clean Water
26 Act. Plaintiff, United States of America, seeks an order enjoining further violations, directing
27 payment of a civil penalty, and directing mitigation of certain wetlands subject to the jurisdiction of
28 Section 404 of the Clean Water Act and illegally filled by the Defendant.

1 California.

2 10. The vernal pools at the Shadowbrook subdivision were habitat for the endangered
3 vernal pool tadpole shrimp and threatened vernal pool fairy shrimp, crustaceans that are listed under
4 the Endangered Species Act ("ESA") of 1973 (7 USC § 136; 16 USC § 460 et seq.). The drainage
5 ditch and associated uplands were habitat for the giant garter snake, which is listed as threatened under
6 the ESA.

7 11. Defendant's activities permanently affected approximately 0.26 acres of vernal pools,
8 0.09 acres of drainage ditch, and 2.27 acres of associated uplands, resulting in the destruction of
9 aquatic and upland habitat, including habitat for endangered species.

10 12. The Shadowbrook vernal pools and drainage ditch are adjacent and hydrologically
11 connected to Strawberry Creek. Strawberry Creek flows into the Sacramento River, a navigable river,
12 and thus the Shadowbrook waters are "waters of the United States" and "navigable waters" within the
13 meaning of CWA, 33 U.S.C. § 1362(7).

14 13. In November of 2003, Defendant was responsible for placing fill and/or dredged
15 material consisting of earthen material and soil into and upon vernal pools and seasonal wetlands on
16 the development known as Lakemont 8 in Elk Grove, which is adjacent to the Shadowbrook
17 development.

18 14. The vernal pools and seasonal wetlands at the Lakemont 8 development were habitat
19 for the endangered vernal pool tadpole shrimp and threatened vernal pool fairy shrimp, as well as the
20 threatened giant garter snake.

21 15. Defendant's activities destroyed approximately 0.12 acres of vernal pools and seasonal
22 wetlands, which were habitat for endangered species.

23 16. The Lakemont 8 vernal pools and seasonal wetlands are adjacent and hydrologically
24 connected to Strawberry Creek. Strawberry Creek flows into the Sacramento River, a navigable river,
25 and thus the Lakemont 8 waters are "waters of the United States" and "navigable waters" within the
26 meaning of CWA, 33 U.S.C. § 1362(7).

27 17. The dredged and/or fill materials discharged by Defendant are "pollutants" within the
28 meaning of CWA, 33 U.S.C. § 1362(6).

1 18. The discharges of dredged and/or fill material by Defendant are "discharges of a
2 pollutant" within the meaning of CWA, 33 U.S.C. § 1362(12).

3 19. Defendant's discharges of dredged and/or fill material at Shadowbrook and Lakemont 8
4 did not comply with the permit program established under CWA, 33 U.S.C. § 1344, and violated 33
5 U.S.C. § 1311.

6 20. Defendant's discharges of dredged and/or fill material at Shadowbrook and Lakemont 8
7 were not authorized and violated CWA, 33 U.S.C. §§ 1344 and 1311(a).

8 FIRST CAUSE OF ACTION
9 (Civil Penalty)

10 21. Plaintiff hereby reincorporates the allegations of paragraphs 1 through 20.

11 22. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any
12 pollutant into waters of the United States except as in compliance with, inter alia, a permit issued by
13 the Secretary of the Army pursuant to Section 404 of the CWA, 33 U.S.C. Section 1344.

14 23. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who
15 violates Section 301(a) of the CWA, 33 U.S.C. § 1311(a), shall be subject to a civil penalty, not to
16 exceed \$25,000 per day for each violation.

17 24. Each day the illegally discharged pollutants remain in place constitutes a separate and
18 distinct violation of 33 U.S.C. §§ 1311(a) and 1344.

19 25. The vernal pools and drainage ditch at the Shadowbrook site and the vernal pools and
20 seasonal wetlands at the Lakemont 8 site are "waters of the United States" subject to section 404 of the
21 Clean Water Act.

22 26. Defendant's discharges of dredged and/or fill material at Shadowbrook and Lakemont 8
23 constitute discharges of pollutants into navigable waters in violation of 33 U.S.C. §§ 1311(a) and
24 1344.

25 SECOND CAUSE OF ACTION
26 (Injunctive Relief)

27 27. Plaintiff hereby reincorporates the allegations of paragraphs 1 through 26.

28 28. Unless Defendant is restrained and enjoined from further discharging pollutants into the
waters of the United States, those waters will be irreparably harmed.

1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff, United States of America, prays as follows:

- 3 1. That Defendant be directed to pay to the United States a civil penalty of not to exceed
4 \$25,000 for each day that the unpermitted fill remains in place as provided in 33 U.S.C. §§ 1311(a)
5 and 1344, together with accrued interest thereon, administrative costs, and penalties; and
6 2. That Defendant be permanently enjoined from discharging dredged or fill material into
7 the waters of the United States without all permits required by law; and
8 3. For such other and further relief as this Court deems just and equitable.

9 Respectfully submitted,

10 MCGREGOR W. SCOTT
11 United States Attorney

12 DATED: July 17, 2008

13 By: /s/ Sylvia Quast
14 SYLVIA QUAST
15 Assistant United States Attorney
16 United States Attorney's Office
17 Attorney for Plaintiff
18 United States of America

19 Of Counsel:

20 MICHAEL SHIELDS
21 Assistant District Counsel
22 U.S. Army Corps of Engineers
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